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January 10, 2014

Honorable A. Kathleen Tomlinson
United States District Court,
Eastern District of New York
100 Federal Plaza, Courtroom 910
P.O. Box 9014
Central Islip, NY 11722-9014

**Re: Genometrica Research, Inc. v. Gorbovitsky, et al.
Case No.: 11-cv-05802 (ADS) (AKT)**

Dear Judge Tomlinson:

I am Discovery Counsel for Ms. Gorfinkel in both cases enumerated above and provide a response to the letter of Peter I. Bernstein, Esq. dated December 24th, 2013.

Ms. Gorfinkel provides her own Declaration annexed hereto plus Exhibits as she personally dealt with Mr. Bernstein during the period in question, December 1, 2011 through July 1, 2012. Documents from said period are being sought in both cases.

As per Ms. Gorfinkel's Declaration, during the above referenced six (6) month period, Mr. Bernstein and his colleague Dr. Park individually and jointly took testimony from Ms. Gorfinkel and her husband, Boris Gorbovitski. Additionally, Mr. Bernstein and/or Dr. Park attended meetings with Nancy Daneau, of the SUNY Research Foundation, wherein notes were taken.

Ms. Gorfinkel has been a tenured Professor at the University for 15 years and operates a lab which conducts world famous research. Ms. Gorfinkel is familiar with the protocols and procedures for SUNY(RF) record keeping.

The occurrences outlined herein cover the period from December 1st, 2011 through July 1st, 2012:

- (a) Complaint by Genometrica of Patent Infringement (12/05/11) and total rejection of Infringement Complaint by Peter Bernstein with Report in writing by Nancy Daneau of Peter Bernstein's findings on 12/09/11;
- (b) Complaint by Genometrica against Vera Gorfinkel of Conflict of Interest (12/16/11 Nancy Daneau's " Notice of Intent" to cancel ABBM contract of \$1.4 Million and shut down her Lab); and
- (c) Decision by Nancy Daneau based upon evidence adduced (12/16/11 to 1/16/12) to shut Down Lab on 1/17/12 and terminate ABBM Research by Vera Gorfinkel with "Letter of Termination";
- (d) Investigation and evaluation from 1/17/12 onward by Peter Bernstein of 100,000 pages of Genometrica Research for period from 2008 through Formal Report to Foundation of December, 2011 and ABBM Research Reports to NIH/NIC on file with University Covering period from 2009 through Nancy Daneau's 1/17/12 "Letter of Termination" to determine if Conflict of Interest Occurred; and
- (e) Investigation of Genometrica's offer by its attorney Klein to Nancy Daneau to extend the Genometrica Research Project beyond December 31, 2011 for another lengthy period subject to the removal of Dr. Gorfinkel as Principal Investigator which offer was withdrawn when Peter Bernstein made a determination, reported to the Foundation that no "Conflict of Interest" had occurred and the Genometrica complaint dating back to 12/05/11.

Ms. Gorfinkel has the best knowledge of the shortcomings of the documents provided by Mr. Bernstein on behalf of SUNY(RF), see Ms. Gorfinkel's Declaration hereto as Exhibit A and based upon her review of Peter Bernstein's responses of 10/16/13 and 12/3/13 to the subpoenas of this office dated September 30th, 2013.

Of the approximately 500 pages provided on 10/16/13 and 12/23/13, Professor Gorfinkel avers only 40 pages are possibly relevant¹ with 14 pages marked "Confidential". They were omitted from the earlier "Privilege Log" of 10/16/13 without explanation for such omission. Being at all times in the Foundation's possession, those 14 pages now referenced as "Confidential" must be produced as a waiver of Privilege occurred from non-inclusion in "Privilege Log". Of the balance of 26 documents (from the 40 in the disc of 500) with no explanation why they were not produced earlier a good faith basis existed for an extension request. Stated simply by Dr. Gorfinkel, there are six months of documents in the possession the foundation, few were produced.

Conclusion

¹ Bulk of 500 pages are Agreements with SUNY(RF) which were not demanded. The Subpoenas primarily sought documents concerning case#13-cv-3093(PKC)(AKT), specifically documents relating to SUNY(RF) determination that no patent infringement occurred (12/01/11 to 12/09/11) and false Complaint of Conflict of Interest against Dr. Gorfinkel (12/16/11 through 7/01/12).

Professor Gorfinkel's annexed declaration avers that she is familiar with the procedures and protocols of SUNY(RF), wherein six months of fact finding occurred between December 1, 2011 and July 1, 2002; therefore documentation exists at the University level that no Patent Infringement occurred, further no "Conflict of Interest" occurred by Vera Gorfinkel covering the period of the Genometrica Research during 2008 through December 31, 2011 (100,000 pages of Research) and the ABMM Research for the period 2009 through the Termination of its Research Contract with SUNY(RF) by Nancy Daneau on January 17, 2012

Mr. Bernstein has declined to produce all of the Foundation's records for both these significant events.²

Our office is preparing a motion for Contempt as suggested by this Court and will file same prior to the hearing date of January 27th..

A good faith basis existed for the Application to the Court for an extension granted to January 27, 2014 based upon the information provided by Professor Gorfinkel, who was present during these events described above and has examined the few documents produced over a six month history of events at SUNY(RF), supervised by Mr. Bernstein,

Respectfully submitted,

/s/Gregory Koerner
Gregory Koerner

CC: Arthur Morrison, Esq., via ECF
William V. Rapp, Esq., via ECF
Betty Tufariello, Esq., via ECF
Nicolas Malito, Esq., via ECF
Peter I. Bernstein, Esq., via email

² As SUNY(RF) is a party plaintiff to case #11-cv-5802(PKC) (AKT) and a party is subject to Discovery, with Mr. Bernstein being the primary source of providing documents of recommendations of non- patent infringement and non "Conflict of Interest" which were put in place by SUNY(RF) between 12/01/11 and 7/01/12 , the Court is asked to consider permitting a deposition of Mr. Bernstein including detailed Document Demands